

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCELLUS GREENE, a.k.a.
MARVELLOUS AFRIKAN WARRIOR,

Plaintiff,

v.

J. BROWN, et al.,

Defendants.

No. C 15-1130 JSW (PR)
ORDER OF DISMISSAL

INTRODUCTION

Plaintiff, a prisoner of the State of California, filed this pro se civil rights complaint under 42 U.S.C. § 1983. For the reasons discussed below, the complaint is dismissed. The application to proceed *in forma pauperis* is granted in a separate order.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic

1 recitation of the elements of a cause of action will not do. . . . Factual allegations must
 2 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
 3 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
 4 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
 5 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
 6 699 (9th Cir. 1990).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
 8 (1) that a right secured by the Constitution or laws of the United States was violated, and
 9 (2) that the alleged violation was committed by a person acting under the color of state
 10 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 LEGAL CLAIMS

12 Plaintiff alleges that Defendant Brown, a guard at Pelican Bay State Prison,
 13 threatened him by stating "U won't be going home." Allegations of mere threats also are
 14 not cognizable under § 1983. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (mere
 15 threat does not constitute constitutional wrong, nor do allegations that naked threat was
 16 for purpose of denying access to courts compel contrary result). This allegation does not
 17 state a cognizable claim under Section 1983.

18 Plaintiff also alleges that Brown and "others" took his peanut butter and jelly,
 19 vitamins, toothpaste, and deodorant without authorization. Neither the negligent nor
 20 intentional deprivation of property states a due process claim under Section 1983 if the
 21 deprivation was random and unauthorized, however. *Parratt v. Taylor*, 451 U.S. 527,
 22 535-44 (1981), *overruled in part on other grounds*, *Daniels v. Williams*, 474 U.S. 327,
 23 330-31 (1986). The availability of an adequate state post-deprivation remedy, e.g., a state
 24 tort action, precludes relief because it provides sufficient procedural due process. *See*
 25 *Zinnermon v. Burch*, 494 U.S. 113, 128 (1990) (where state cannot foresee, and therefore
 26 provide meaningful hearing prior to, deprivation statutory provision for post-deprivation
 27 hearing or common law tort remedy for erroneous deprivation satisfies due process).
 28 California law provides such an adequate post-deprivation remedy. *See Barnett v.*

1 *Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).
2 Accordingly, Plaintiff's allegations that the unauthorized deprivation of his personal
3 property does not state a cognizable claim under Section 1983 for the violation of his
4 constitutional rights.

5 **CONCLUSION**

6 For the reasons set out above, this action is DISMISSED.

7 The Clerk shall close the file and enter judgment.

8 IT IS SO ORDERED.

9 DATED: June 1, 2015

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11 _____
12 JEFFREY S. WHITE
13 United States District Judge
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